

# Geraghty & Bonnano, LLC

Attorneys at Law

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July 6, 2020

Via email [ggoeschel@eitownhall.com](mailto:ggoeschel@eitownhall.com)

Gary Goeschel  
Director of Planning  
Town of East Lyme  
108 Pennsylvania Avenue  
Niantic, CT 06357

Re: Upper Pattagansett Drive English Harbour transfer to East Lyme Land Trust.

Dear Gary:

Thank you for taking the time to meet with me regarding my prior correspondence of January 7, 2020. As discussed there are two items before the Planning and Zoning Commission on July 7, 2020 that my client is seeking the commission to address.

1. Release of the Open Space Covenant. The Open Space Covenant recorded in volume 653 page 355 required the developer and/or its successors to provide up to 30 acres open space to the town as part of the development. So far, the developer or its predecessors have donated 41.35 acres in open space, Ex. A., thereby satisfying this requirement. We are seeking a release of this covenant. My client is in the process of transferring to the East Lyme Land Trust an additional 37.99 acres. Part of this involves a grant to the land trust by the Connecticut Department of Energy and Environmental Protection ("DEEP"). DEEP requires a title insurance policy be issued to it as a condition of the grant and requires this encumbrance be removed in order to complete the funding. I have attached a copy of the proposed release for your review. Ex. B.
2. Assignment of the Conservation Easement recorded in volume 870 page 689 of the East Lyme land records from the town to the East Lyme Land Trust. My client is donating the land trust the land encumbered by the conservation easement and we are requesting that the easement be assigned to the land trust. The easement, which was

Replies to New London only at:

38 GRANITE STREET, PO BOX 231  
NEW LONDON, CONNECTICUT 06320

WWW.GERAGHTYBONNANO.COM

131 DWIGHT STREET  
NEW HAVEN, CONNECTICUT 06511

TELEPHONE (860) 447-8077 / FAX (860) 447-9833

required by the commission as part of its subdivision approval, was never sent to the selectman for acceptance or approval and was solely a condition imposed and adopted by this commission. We are therefore of the opinion that the commission can assign the easement to the land trust. Section 7-3 (C) of the sub-division regulations allows the commission to require easements be given to the land trust or other appropriate organization. Section 7-4 provides that the commission shall accept the particular proposed document. If not accepted by the selectman, which this was not, as it was never approved since it was not forwarded, the documents are to be returned to the applicant. Similarly, in Phase II A of the Nottingham Hills Subdivision a Conservation Easement was recorded in Volume 742 Page 502 of the East Lyme land records, Ex. C that also was not forwarded to the Board of Selectman. Since the property encumbered by this Conservation Easement abuts the property being acquired by the East Lyme Land Trust we are also requesting this easement be assigned to the East Lyme Land Trust. I have enclosed as Ex. D an Assignment of these two Conservation Easements. Finally I enclose a letter from the East Lyme Land Trust agreeing to the assignment of these Conservation Easements. I have enclosed an Assignment of Conservation Easements as Ex. E.

We would propose that the commission approve the assignment of the easements to the land trust. Both the release of the aforementioned covenant and the assignment of easement will be held in escrow by my firm until we actually close the transfer to the land trust and the Department of Energy and Environmental Protection.

Sincerely,



Paul M. Geraghty

cc: English Harbour Asset Management, LLC

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# EXHIBIT A

OPEN SPACE CALCULATIONS  
NOTTINGHAM HILLS SUBDIVISION

Phase I

<u>Lot #</u>	<u>Acreage</u>
1	1.71
2	.92
3	1.25
4	1.39
5	1.23
6	1.21

Phase II

6	1.34
8	2.21
9	3.09
10	1.95
11	1.71
30	1.29
31	1.34
48	2.96
49	2.11
197 Upper Patt	2.68

Phase III

12	1.06
13	1.34
14	1.17
15	1.27
16	1.35
17	1.0
18	.93
19 (rear)	2.45
20	Phase IV
21 (rear)	3.12
22	1.30
24	1.73
25	1.78
26	2.58
27	2.91

28 4.36

**Phase IV**

20 33.0

29 3.05

32 15.03

**Open Space**

Aunt Ruth Turnpike 23.2

Phase I .32 (south side Kensington Drive)

Phase II 4.24 (Conservation Easement)

Phase III N/A

Phase IV 10.63 (Conservation Easement)

2.96 (Conservation Easement)

**TOTAL ACRES**

LOTS: 107.82

OPEN SPACE: 41.35

# EXHIBIT B

# RELEASE OF COVENANT

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT East Lyme Planning Commission for** consideration of One and 00/100 (\$1.00) Dollar and other goods and valuable consideration does hereby **RELEASE AND REMISE** all its rights and title and interest in and to certain Open Space Covenant (s) between New England National, LLC Niantic Real Estate, LLC and the Town of East Lyme and recorded in the East Lyme land records at volume 653 page 335 to the East Lyme Land Trust

IN WITNESS WHEREOF, Torrance Family Limited Partnership has caused these presents to be signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signed, Sealed and Delivered  
And in the presence of:

**Town of East Lyme Planning Commission**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF CONNECTICUT     )

\_\_\_\_\_  
Notary Public: My Commission Expires

COUNTY OF NEW LONDON)

\_\_\_\_\_

# EXHIBIT C



Return To  
Planning (e.l.).

Conservation Easement

1465

KNOW ALL PERSONS BY THESE PRESENTS, that NEW ENGLAND NATIONAL, LLC and NIANTIC REAL ESTATE LIMITED LIABILITY COMPANY ("Grantors"), for the consideration of One Dollar (\$1.00) and other valuable consideration received to our full satisfaction of the Town of East Lyme, a municipal corporation, ("Grantee"), do give, and grant, and convey unto the Grantee, it's successors and assigns forever, the following:

A conservation easement to have all the force and effect for a "conservation easement" as defined by Section 47-42a of the Connecticut General Statutes for the purpose of retention of the hereinafter described land predominantly in its present natural and open condition in perpetuity.

The land subject to this conservation easement consists of those portions of the land located in the Town of East Lyme, County of New London, and State of Connecticut, which is designated as "Conservation Area" on a map entitled "NOTTINGHAM HILLS RESUBDIVISION PHASE 4 NEW ENGLAND NATIONAL, LLC East Lyme, Connecticut Sheet SD 1", prepared by J. ROBERT PFANNER & ASSOCIATES, P.C. CIVIL ENGINEERS & LAND SURVEYORS, and dated October 20, 2010, Revised 11/18/2010 to be filed in the East Lyme Land Records.

Within the said "Conservation Area", without prior express written consent from the Grantee or unless an alternative easement boundary is proposed and approved by the Planning Commission, or its successor in interest, as part of an application for a permit:

1. There shall be no construction or maintenance of buildings, camping accommodations, mobile homes, patios, decks, porches, or other structures except as specifically permitted below;
2. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock minerals or other materials, nor any change in the topography of the land in any manner, except as specifically permitted below;
3. There shall be no removal, destruction or cutting of trees or plants, spraying with biocides, herbicides, or their agents inimical to plant, animal or insect life, grazing of domestic or farm animals, or disturbance or change in the natural habitat in any manner, except as specifically permitted below;
4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substances of material such as land fill or dredging spoils, except as specifically permitted below;
5. There shall be no manipulation or alteration of natural water courses, shores, marshes, or other water bodies or activities or uses detrimental to water purity, except as specifically permitted below;

NO  
CONVEYANCE TAXES COLLECTED  
Esther B. Williams  
TOWN CLERK OF EAST LYME

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6. There shall be no operation of motorized vehicles, including snowmobiles, dunebuggies and all terrain vehicles; and
7. There shall be no construction, improvement, or upgrading of roads, driveways, parking areas, carpaths, or footpaths except as necessary to maintain existing footpaths in the current condition or as specifically permitted below.

The provisions of the preceding restrictions notwithstanding, the following uses and activities by Grantors, and their heirs, successors and assigns, and any work or activity otherwise prohibited by the preceding restrictions which is reasonably necessary or appropriate in connection with such uses or activities shall not be prohibited by this Conservation Easement or considered inconsistent with the intent of this grant and are specifically permitted:

- a) The removal of dead, diseased, or damaged trees or other vegetation when such removal is necessary for reasons of safety, to control the spread of disease, or to control obnoxious plant growth such as cat briar, poison ivy, wild grape, oriental bittersweet, or other invasive species, and when such activities are conducted in a manner which will otherwise not be harmful to the remaining plant life; and
- b) Activities associated with an approved inland wetlands permit, such as, but not limited to, wetland mitigation or enhancement, stormwater management, or stormwater discharges.
- c) As to Conservation Area #2, use of the area for drainage and drainage structures, septic systems, wells and/or emergency access over existing accessway to Upper Kensington Drive.

Reserving to the grantor the right to use the servient tenements for any purposes not inconsistent with the restrictions herein granted.

This grant for Conservation Easement is intended to encompass the powers and rights granted pursuant to Sections 47-42a through 47-42c of the Connecticut General statutes as they may be amended from time to time, and the Grantee is hereby granted the right, in a reasonable manner and at reasonable times, to enforce by proceedings of law or in equity the covenants herein above set forth, including, but not limited to, the right to require restoration of the Conservation Easement area substantially to its condition immediately prior to any violation of the restrictions herein contained. The failure of the Grantee to act in any one or more instances to enforce such rights shall not act as a waiver or forfeiture of its rights to take action as may be necessary to insure compliance with the covenants and purposes of this grant; provided, however, nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantors or the owners of the servient tenements for any changes to the Conservation Easement area due to causes beyond the control of the Grantor's or the owners of the servient tenements, such as changes caused by fire, flood, storm, earthquake, insect infestation, wildlife damage, or the unauthorized wrongful acts of third parties.

In the event that the Grantee becomes aware of an event or circumstance of noncompliance within the terms and conditions herein set forth, the Grantee shall give notice of such event or circumstance of noncompliance by certified mail, return receipt

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requested, to the owner of the servient tenement of the property involved at his last known address, such notice to contain a request for corrective actions reasonable required to abate such event or circumstance of noncompliance and restore the conservation Easement area to substantially its previous condition.

Failure by the owner of the servient tenement to whom notice has been given to cause discontinuance or abatement or to undertake such other action as may be reasonably requested by the Grantee within thirty (30) days after receipt of notice shall entitle the Grantee to bring an action at law equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement to require the restoration of the Conservation Easement area to substantially its previous condition, to enjoin such noncompliance by appropriate temporary or permanent injunction and/or to seek to recover damages arising from such noncompliance. Such damages, when and if recovered shall be applied by the Grantee first to any necessary corrective action on the Conservation Easement area, then to other damages incurred by the Grantee and arising from such noncompliance. Such damages, when and if recovered shall be applied by the Grantee first to any necessary corrective action on the Conservation Easement area, then to other damages incurred by the Grantee and arising from such noncompliance.

If a court of competent jurisdiction determines that an owner of the servient tenement has failed to comply with the terms and conditions of this conservation Easement, the owner shall reimburse the Grantee for any reasonable cost of enforcement, including court costs and reasonable attorney's fees. If such court determines that such owner was in compliance with the terms and conditions of this conservation Easement the Grantee shall reimburse such owner for court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantors, for themselves, their heirs, successors and assigns, hereby waive any defense of laches with respect to any delay by the Grantee, its successors and assigns, in actions to enforce any restriction to exercise any rights under this grant.

This instrument shall be recorded on the land records to the Town of East Lyme and shall be governed by the laws of the State of Connecticut. In the event that any provision of clause of this instrument conflicts with any applicable law, such conflict shall not effect other provision of this instrument which can be given effect without the conflicting provision, and, to this end, the provisions hereof are declared to be severable.

IN WITNESS WHEREOF, I have hereunto set my hand this 12<sup>th</sup> day of Jan, 2011.

Dawn Delano  
Dawn Delano

NEW ENGLAND NATIONAL, LLC

By: [Signature]

Duly Authorized

[Signature]  
WILLIAM D. FUGA JR

# EXHIBIT D

## CONSERVATION EASEMENT

2/29

KNOW ALL PERSONS BY THESE PRESENTS, that Niantic Real Estate Limited Liability Company ("Grantor"), for the consideration of One Dollar (\$1.00) and other valuable consideration received to our full satisfaction of the Town of East Lyme, a municipal corporation, ("Grantee"), do give, and grant, and convey unto the Grantee, it's successors and assigns forever, the following:

A conservation easement to have all the force and effect for a "conservation easement" as defined by Section 47-42a of the Connecticut General Statutes for the purpose of retention of the hereinafter described land predominantly in its present natural and open condition in perpetuity.

The land subject to this conservation easement consists of those portions of the land located in the Town of East Lyme, County of New London, and State of Connecticut, which is designated as "Conservation Area Easement" consisting of 4.24 acres and shown on a map entitled "Nottingham Hills Subdivision Phase IIA Niantic Real Estate, LLC East Lyme, Connecticut Sheets 1-10 J. Robert Pfanner & Associates, P.C., April 10, 2004 Rev. through July 10, 2004."

Within the said Conservation Area Easement, without prior express written consent from the Grantee or unless an alternative easement boundary is proposed and approved by the Planning Commission, or its successor in interest, as part of an application for a permit:

1. There shall be no construction or maintenance of buildings, camping accommodations, mobile homes, patios, decks, porches, or other structures except as specifically permitted below;
2. There shall be no filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock minerals or other materials, nor any change in the topography of the land in any manner, except as specifically permitted below;
3. There shall be no removal, destruction or cutting of trees or plants, spraying with biocides, herbicides, or their agents inimical to plant, animal or insect life, grazing of domestic or farm animals, or disturbance or change in the natural habitat in any manner, except as specifically permitted below;
4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, and no changing of the topography through the placing of soil or other substances of material such as land fill or dredging spoils, except as specifically permitted below;

NO CONVEYANCE TAXES COLLECTED  
*Esther B. Williams*  
 TOWN CLERK OF EAST LYME

5. There shall be no manipulation or alteration of natural water courses, shores, marshes, or other water bodies or activities or uses detrimental to water purity, except as specifically permitted below;
6. There shall be no operation of motorized vehicles, including snowmobiles, dunebuggies and all terrain vehicles; and
7. There shall be no construction, improvement, or upgrading of roads, driveways, parking areas, carpaths, or footpaths except as necessary to maintain existing footpaths in the current condition or as specifically permitted below;

The provisions of the preceding restrictions notwithstanding, the following uses and activities by Grantors, and their heirs, successors and assigns, and any work or activity otherwise prohibited by the preceding restrictions which is reasonably necessary or appropriate in connection with such uses or activities shall not be prohibited by this Conservation Easement or considered inconsistent with the intent of this grant and are specifically permitted:

- a) The removal of dead, diseased, or damaged trees or other vegetation when such removal is necessary for reasons of safety, to control the spread of disease, or to control obnoxious plant growth such as cat brier, poison ivy, wild grape, oriental bittersweet, or other invasive species, and when such activities are conducted in a manner which will otherwise not be harmful to the remaining plant life; and
- b) Activities associated with an approved inland wetlands permit, such as, but not limited to, wetland mitigation or enhancement, stormwater management, or stormwater discharges.
- c) Activities or improvements as specifically approved by the Planning Commission and shown on the approved subdivision map, including use of such area as access to open space areas.

Except for such restriction, such Conservation Easement areas may be used without hindrance by the owners of the servient tenements.

This grant for Conservation Easement is intended to encompass the powers and rights granted pursuant to Sections 47-42a through 47-42c of the Connecticut General statutes as they may be amended from time to time, and the Grantee is hereby granted the right, in a reasonable manner and at reasonable times, to enforce by proceedings of law or in equity the covenants herein above set forth, including, but not limited to, the right to require restoration of the Conservation Easement area substantially to its condition immediately prior to any violation of the restrictions herein contained. The failure of the Grantee to act in any one or more instances to enforce such rights shall not act as a waiver or forfeiture of its rights to take action as may be necessary to insure compliance with the covenants and purposes of this grant; provided, however, nothing herein shall be

construed to entitle the Grantee to institute any enforcement proceedings against the Grantors or the owners of the servient tenements for any changes to the Conservation Easement area due to causes beyond the control of the Grantor's or the owners of the servient tenements, such as changes caused by fire, flood, storm, earthquake, insect infestation, wildlife damage, or the unauthorized wrongful acts of third parties.

In the event that the Grantee becomes aware of an event or circumstance of noncompliance within the terms and conditions herein set forth, the Grantee shall give notice of such event or circumstance of noncompliance by certified mail, return receipt requested, to the owner of the servient tenement of the property involved at his last known address, such notice to contain a request for corrective actions reasonable required to abate such event or circumstance of noncompliance and restore the conservation Easement area to substantially its previous condition.

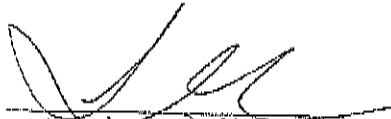
Failure by the owner of the servient tenement to whom notice has been given to cause discontinuance or abatement or to undertake such other action as may be reasonably requested by the Grantee within thirty (30) days after receipt of notice shall entitle the Grantee to bring an action at law equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement to require the restoration of the Conservation Easement area to substantially its previous condition, to enjoin such noncompliance by appropriate temporary or permanent injunction and/or to seek to recover damages arising from such noncompliance. Such damages, when and if recovered shall be applied by the Grantee first to any necessary corrective action on the Conservation Easement area, then to other damages incurred by the Grantee and arising from such noncompliance. Such damages, when and if recovered shall be applied by the Grantee first to any necessary corrective action on the Conservation Easement area, then to other damages incurred by the Grantee and arising from such noncompliance.

If a court of competent jurisdiction determines that an owners of the servient tonement has failed to comply with the terms and conditions of this conservation Easement, the owner shall reimburse the Grantee for any reasonable cost of enforcement, including court costs and reasonable attorney=s fees. If such court determines that such owner was in compliance with the terms and conditions of this conservation Easement the Grantee shall reimburse such owner for court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantors, for themselves, their heirs, successors and assigns, hereby waive any defense of laches with respect to any delay by the Grantee, its successors and assigns, in actions to enforce any restriction to exercise any rights under this grant.

This instrument shall be recorded on the land records to the Town of East Lyme and shall be governed by the laws of the State of Connecticut. In the event that


any provision of clause of this instrument conflicts with any applicable law, such conflict shall not effect other provision of this instrument which can be given effect without the conflicting provision, and, to this end, the provisions hereof are declared to be severable.

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of April, 2006.

  
Theodore A. Harris

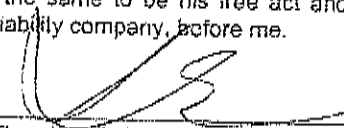
NIANTIC REAL ESTATE LIMITED  
LIABILITY COMPANY

by:   
Jeffrey Torrance, its Manager  
Duty Authorized

  
Cordelia R. Graves

STATE OF CONNECTICUT  
SS  
COUNTY OF NEW LONDON

Personally appeared, Jeffrey Torrance, Manager of Niantic Real Estate, Limited Liability Company, signer and sealer of the foregoing instrument and who acknowledged the same to be his free act and deed and the free act and deed of said limited liability company, before me.

  
Theodore A. Harris  
Commissioner of the Superior Court

Recorded May 22 2006  
10:30 AM  
PM Ester S. Williams  
East Lyme Town Clerk



# EXHIBIT E

# ASSIGNMENT OF EASEMENT

## KNOW ALL MEN BY THESE PRESENTS:

**THAT East Lyme Planning Commission** for consideration of One and 00/100 (\$1.00) Dollar and other goods and valuable consideration does hereby assigns, transfer all its rights and title and interest in and to certain Conservation Easement(s) dated January 10, 2011 between New England National, LLC Niantic Real Estate, LLC and the Town of East Lyme and recorded in the East Lyme land records at volume 870 page 689 to the East Lyme Land Trust and a Conservation Easement between Niantic Real Estate,, LLC and the Town of East Lyme dated April 18, 2006 and the Town of East Lyme recorded in volume 742 page 502 of the East Lyme land records.

IN WITNESS WHEREOF, Torrance Family Limited Partnership has caused these presents to be signed this      day of      , 2020.

Signed, Sealed and Delivered  
And in the presence of:

**Town of East Lyme Planning Commission**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_

STATE OF CONNECTICUT      )

\_\_\_\_\_  
Notary Public: My Commission Expires

\_\_\_\_\_  
COUNTY OF NEW LONDON)

# EXHIBIT F



PO Box 831  
East Lyme, CT 06333  
eastlymelandtrust.com

July 2, 2020

Kirk Scott, Chairman  
Town of East Lyme  
Planning Commission  
108 Pennsylvania Avenue  
Niantic, CT 06357

Re: Assignment of Conservation Easements

Dear Chairman Scott and Members of the East Lyme Planning Commission:

This correspondence shall confirm that the East Lyme Land Trust has requested, and will accept, the Assignment of Conservation Easements provided to the Town of East Lyme by the developer of the Nottingham Hills Subdivision and recorded in the Land Records of East Lyme in Volume 742, Page 502 and Volume 870, Page 689.

Sincerely,

Ronald Luich  
President